

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Petitioner,

No. 126 M.D. 2017

PENNSYLVANIA GENERAL ENERGY
COMPANY, L.L.C.,

Intervenor,

v.

GRANT TOWNSHIP OF INDIANA COUNTY
AND THE GRANT TOWNSHIP BOARD OF
SUPERVISORS,

Respondents.

**PETITION TO INTERVENE OF
SENECA RESOURCES COMPANY, LLC**

Pursuant to Pennsylvania Rule of Appellate Procedure 1531(b) and Pennsylvania Rule of Civil Procedure 2327, Proposed Intervenor Seneca Resources Company, LLC (“Seneca”) respectfully applies for leave to intervene in the above-captioned matter. In support of its Petition, Seneca states as follows:

FACTUAL AND PROCEDURAL BACKGROUND

1. Seneca is an oil and gas company which maintains an office at 2000 Westinghouse Drive, Suite 400, Cranberry Township, PA 16066. Seneca conducts oil and gas exploration, drilling, production and related operations in Pennsylvania.

2. Seneca currently owns and operates over one thousand oil and gas wells across Pennsylvania, including conventional, unconventional and injection wells.

Its activities include managing produced fluids generated from operating wells.

3. Seneca's injection wells are permitted by the EPA Region III, including permitting to construct and operate UIC Class IID commercial injection wells located in Pennsylvania.

4. In particular, Seneca currently operates two injection wells in Highland Township, Elk County, which are permitted by EPA Region III with a Class IID UIC (permit numbers: PAS2D025BELK and PAS2D026BELK) and DEP (permit numbers: 37-047-23835-00-01 and 37-047-23885-00-00).

5. As there are limited disposal options for the fluids produced by oil and gas operations, UIC wells are an environmentally-sound and necessary option for disposal.

6. This litigation arises from Grant Township of Indiana County's ("Grant Township") 2015 adoption of a Home Rule Charter form of government that purports to prohibit "depositing of waste from oil and gas extraction" into injection wells and to prohibit the Pennsylvania Department of Environmental Protection ("DEP") from issuing a permit under state environmental laws to allow such activities. This is more fully set forth in the Court's prior opinions in this case, *Dep't*

of Env't Prot. v. Grant Twp. of Indiana Cnty. and The Grant Twp. Bd. of Supervisors, (Pa. Cmwlth., No. 126 M.D. 2017), including:

- (a) May 2, 2018 (overruling in part and sustaining in part petitioner's preliminary objections – “*Grant Township I*”);
- (b) March 2, 2020 (denying petitioner's application for summary relief – “*Grant Township II*”); and
- (c) January 26, 2021 (denying the parties applications to stay or dismiss – “*Grant Township III*”).

7. As a result of the opinions in *Grant Township I*, *Grant Township II* and *Grant Township III*, the claims currently pending before the Court are those in Counts I through IV of DEP's Petition for Review and Grant Township's Counterclaims 3 and 4.

8. Seneca requests intervention on the claims currently before the Court and does not seek to enlarge the scope of any claim.

9. A Case Management Order was entered on February 26, 2021, with deadlines leading to the setting of trial in August or September of 2021, following the Court's order in *Grant Township III*. Seneca would abide by the ordered deadlines and does not intend to unilaterally request an extension of such deadlines.

SENECA'S GROUNDS FOR INTERVENTION

10. Pennsylvania Rule of Appellate Procedure 1531(b) allows a party not named as a respondent in an original jurisdiction Petition for Review to seek leave to intervene by filing an application with the Court.

11. Pursuant to Pennsylvania Rules of Appellate Procedure 106 and 1517, original jurisdiction Petitions for Review are governed by the Pennsylvania Rules of Civil Procedure, unless the Rules of Appellate Procedure expressly provide otherwise.

12. Pennsylvania Rule of Civil Procedure 2327 authorizes intervention where “determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.” Pa.R.C.P. 2327(4).

13. Seneca seeks to intervene pursuant to Pa.R.C.P. 2327(4) because it has a unique, substantial, direct and legally enforceable interest in using its wells, particularly its multiple injection wells, that would be adversely affected by a ruling in favor of Grant Township.

14. The relief Grant Township requests in its Counterclaims, i.e., that the Home Rule Charter is valid under the Pennsylvania Environmental Rights Amendment and that DEP violated the ERA by failing to protect and advance rights protected by the ERA, if granted, would extend beyond Grant Township and impact Seneca's ability to operate under its existing UIC well permits and its injection wells.

15. Thus, Seneca satisfies Pennsylvania Rule of Civil Procedure 2327's requirement for intervention because the determination in this action will affect its “legally enforceable interest.” Pa.R.C.P. 2327(4).

16. In addition, in *Grant Township I*, this Court stated that "[scientific and historical evidence concerning environmental issues . . . *may be necessary to fully adjudicate these Counterclaims* as well as DEP's Complaint." Opinion at 16 (emphasis added).

17. As the owner and operator of conventional, unconventional and injection wells, Seneca possesses and would introduce the industry-based, scientific and technical evidence to demonstrate that operating those wells will protect groundwater and other environmental values Grant Township alleges would be at risk if the Home Rule Charter is invalidated.

18. Seneca's industry-based, scientific and historical evidence will assist this Court in its adjudication, and it is uniquely situated in a way that DEP and Pennsylvania General Energy Company, L.L.C. ("PGE") are not. As such, DEP and PGE cannot adequately represent Seneca's interests on these issues.

19. Specifically, Seneca operates disposal wells that are actively permitted and in use. By contrast, PGE does not have any active permits for disposal wells.

20. Thus, Seneca would be the *only* entity with active, permitted disposal facilities in this proceeding. These permitted facilities could be impacted by a ruling in favor of Grant Township, including but not limited to Seneca's Mt. Jewett treatment facility and its Seven Mile Mineral's evaporator facility.

21. Furthermore, unlike DEP or PGE, Seneca will suffer immediate financial harm and disruption in operations in the event of a ruling in favor of Grant Township or a ruling impacting the constitutionality or applicability of the Solid Waste Management Act.

22. No provision of Pennsylvania Rule of Civil Procedure 2329 applies to justify a denial of Seneca's Petition to Intervene. Pa.R.C.P. 2329.

23. Seneca has not delayed seeking intervention in this matter, nor would its intervention cause any undue delay in its resolution, embarrass or prejudice the trial or the adjudication of the rights of Grant Township. *See* Pa.R.C.P. 2329(3). The Court only recently issued its February 26, 2021 Case Management Order setting deadlines, and Seneca does not anticipate acting unilaterally to disturb those deadlines.

24. Further, two of the three current parties do not oppose Seneca's Petition. Specifically, counsel for DEP and PGE have represented that their respective clients do not oppose intervention.

25. Pursuant to Pa.R.C.P. 2328(a), if granted leave to intervene, Seneca would adopt by reference the DEP's Petition for Review and Seneca would Answer the New Matter and Counterclaim of Respondents. Seneca's proposed pleading attached to this Petition as Exhibit A.

WHEREFORE, for the foregoing reasons, Seneca Resources Company, LLC respectfully requests that this Honorable Court grant its Petition to Intervene, approving its intervention and full party status.

Respectfully submitted,

BUCHANAN INGERSOLL &
ROONEY PC

Dated: March 24, 2021

By: /s/ Victoria B. Kush
Stanley Yorsz
Pa. I.D. No 28979
Victoria B. Kush
Pa. I.D. No. 308424
Union Trust Building
501 Grant Street, Suite 200
Pittsburgh, PA 15219-4413
(412) 562-8841

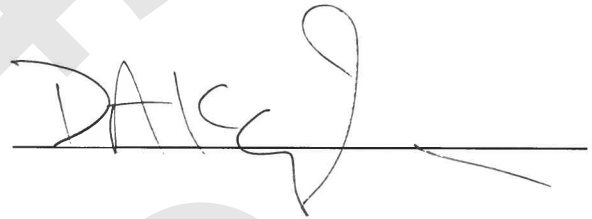
*Attorneys for Proposed Intervenor,
Seneca Resources Company, LLC*

VERIFICATION

I, Douglas Kepler, hereby state that I am a Vice President of Seneca Resources Company, LLC, and I have read the foregoing Petition to Intervene of Seneca Resources Company, LLC and verify that the facts set forth are true and correct to the best of my knowledge, information and belief. To the extent that the foregoing Petition to Intervene of Seneca Resources Company, LLC and/or its language is that of counsel, I have relied upon counsel in making this Verification.

I understand that any false statements made herein are subject to the penalties of 18 Pa. C.S.A. § 4904, relating to unsworn falsification to authorities.

Dated: March 23, 2021

A handwritten signature in black ink, appearing to read "DAKEP", is written over a horizontal line.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Petitioner,

No. 126 M.D. 2017

PENNSYLVANIA GENERAL ENERGY
COMPANY, L.L.C.,

Intervenor,

v.

GRANT TOWNSHIP OF INDIANA COUNTY
AND THE GRANT TOWNSHIP BOARD OF
SUPERVISORS,

Respondents.

[PROPOSED] ORDER

AND NOW, this ____ day of _____, 2021, upon consideration of the
Petition to Intervene filed by Seneca Resources Company, LLC in the above-
captioned matter, it is hereby ORDERED that the Petition to Intervene is
GRANTED.

BY THE COURT:

B. BRIGANCE LEADBETTER,
Senior Judge

CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2021, a copy of the foregoing Petition to Intervene of Seneca Resources Company, LLC was served electronically via the PACFile filing system, in accordance with PA.R.A.P. 121 upon the following counsel of record:

Richard T. Watling, Esquire
Michael J. Heilman, Esquire
John H. Herman, Esquire
DEP Southwest Office of Chief Counsel
400 Waterfront Drive
Pittsburgh, PA 15222-4745
(412) 442-4262

Counsel for Pennsylvania Department of Environmental Protection

Karen L. Hoffmann, Esquire
Syrena Law
128 Chestnut Street, Suite 301a
Philadelphia, PA 19106
(412)916-4509

Counsel for Grant Township of Indiana County

Kevin J. Garber
Babst, Calland, Clements & Zomnir, P.C.
Two Gateway Center
603 Stanwix Street, 6th Floor
Pittsburgh, PC 15222

Lisa C. McManus
Pennsylvania General Energy Company, L.L.C.
120 Market Street
Warren, PA 16365

Counsel for Pennsylvania General Energy Company, L.L.C.

/s/ Victoria B. Kush

Victoria B. Kush

*Attorney for Proposed Intervenor,
Seneca Resources Company, LLC*